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**JUL 16 2003**

**OFFICE OF PETITIONS**

In re Application of	:	
Burt Swersey, Marcie J. Harvey, Elias	:	
Kaplan, Jennifer Lamana, Stephen J.	:	
Howard, Dean Meloney, John Weed, and	:	
Timothy Novak	:	THIRD RENEWED DECISION
Application No. 09/800,872	:	REFUSING STATUS UNDER 37
Filed: March 7, 2001	:	CFR §1.47(a)
Title: DIFFERENTIAL PERMEOMETER	:	

This is in response to the third renewed petition under 37 CFR §1.47(a)<sup>1</sup>, filed May 14, 2001.

The petition under 37 C.F.R. §1.47(a) is **DISMISSED**.

Rule 47 applicant is given **TWO MONTHS** from the mailing date of this decision to reply, correcting the below-noted deficiencies. Any reply should be entitled "Request for Reconsideration of Third Renewed Petition Under 37 C.F.R. §1.47(a)," and should only address the deficiencies noted below, except that the reply may include an oath or declaration executed by the non-signing inventor. Failure to respond will result in

<sup>1</sup> A grantable petition under 37 C.F.R. §1.47(a) requires:

- (1) the petition fee of \$130;
- (2) a surcharge of either \$65 or \$130 if the petition is not filed at the time of filing the application;
- (3) a statement of the last known address of the non-signing inventors;
- (4) proof that a copy of the entire application (specification, claims, drawings, and the oath or declaration) was sent or given to the non-signing inventor for review;
- (5) proof that the non-signing inventor refuses to sign the oath or declaration after having been presented with the application papers if the inventor refuses to sign, or proof that diligent efforts have been made to locate the non-signing inventor if he or she cannot be found, and;
- (6) a declaration which complies with 37 CFR 1.63.

abandonment of the application. Any extensions of time will be governed by 37 C.F.R. §1.136(a).

The above-identified application was filed on March 7, 2001. On April 18, 2001, applicant was mailed a "Notice to File Missing Parts of Nonprovisional Application - Filing Date Granted" (Notice), requiring an executed oath or declaration in compliance with 37 CFR §1.63 and the surcharge for its late filing. This Notice set a two-month period for reply.

The original petition, filed on September 10, 2001, was dismissed in a decision mailed on March 5, 2002, for failure to prove that diligent efforts have been made to locate the non-signing inventor.

With the third renewed petition, petitioner has included a declaration which lists John P. Weed as the first and sole inventor. As the petitioner has previously asserted that Mr. Weed was the seventh of eight joint inventors, this discrepancy will need to be addressed. It is assumed that petitioner merely had joint inventor Weed execute a one page declaration, as opposed to executing the complete declaration in the proper location. A new declaration will need to be submitted, where Mr. Weed is listed as the seventh joint inventor.

The reply to this letter may be submitted by mail<sup>2</sup>, hand-delivery<sup>3</sup>, or facsimile<sup>4</sup>.

**The application file will be retained in the Office of Petitions for two (2) months.**

Telephone inquiries regarding *this decision* should be directed to the undersigned at (703) 305-0011.



Paul Shanowski  
Attorney  
Office of Petitions  
United States Patent and Trademark Office

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<sup>2</sup> Commissioner for Patents, United States Patent and Trademark Office, P.O. Box 1460, Alexandria, VA 22313-1460. Note that this is a new address, as the USPTO has changed addresses as of May 1, 2003.

<sup>3</sup> Office of Petitions, 2201 South Clark Place, Crystal Plaza 4, Suite 3C23, Arlington, VA 22202.

<sup>4</sup> (703) 308-6916 or (703) 305-4257, Attn: Office of Petitions.